

Churchill, Brian (DNREC)

From: Maria Payan <mariap@sraproject.org>
Sent: Thursday, June 2, 2022 11:25 AM
To: Churchill, Brian (DNREC); Michael Payan; nobody here
Subject: Additional commennts for public record Denali Land Utilization Plan renewal State Permit AGU 2202-K-05

Denali Water Solutions 2022 Land Utilization permit application review
State Permit Number AGU 2202-K-05
Additional Written Public Comments submitted to DNREC June 2, 2022

A. Issues with the Delaware NMP Guidance document in the permit application

1. Setbacks. The document does not include all of the setback requirements for land application of food processing waste (eg., public roads, property boundaries, and ditches).

2. DAF specific NMP. The three page document focuses on land application of manure. The words “dissolved air flotation” or “DAF” never appears in the document, but “manure” is mentioned 19 times.

Question: If Denali (and the prior owners Enviro-Organic Technologies, Inc) have been land applying DAF waste for years, why do they not have a NMP specific to DAF?

3. Generic narrative. The NMP is generic and does not refer specifically to any of the Schiff Farm fields used for disposal of DAF by land application. We understand that the permit application contains maps of the parcels elsewhere in the AGU permit application Appendices, but the NMP guidance narrative is mute with respect to instruction to the personnel responsible for land application of DAF waste.

Question: Why doesn't the NMP **narrative** identify unique issues related to the permitted disposal land parcels (eg., setbacks, waters of the state, depth to groundwater, and soil phosphorus and metal content).

4. Unpermitted waste application. The NMP narrative does not include permit restrictions related to land application of other wastes on any parcels other than animal manure or the DNREC approved wastes and how the permit can be voided by DNREC should non-permitted wastes be applied. The permit application Appendix H “Daily Operation Record” does not have a column that identifies what type of waste or manure is being land applied. The form has a space labeled “generator” for the entire table that assumes all the waste applied would be of one type

Question: How does DNREC determine if the permittee has sufficient contractual relationship with Schiff Farms to prevent the land application of unpermitted wastes?

B. Issues with the DNREC AGU permit language

1. Denali does not land apply the waste. The permit focuses on the land application of DNREC approved wastes even though the permittee (and the permit itself) acknowledges that Denali does not do the actual land application – the Schiff Farm does that. Yet the permit makes this assertion in Item 6 on page 14 of 28:

“Application of any waste (excluding animal manure) other than DAF solids or other approved land treatable wastes to the approved land treatment sites as specified above is prohibited and will result in the revocation of this permit.”

And this (item 7 on page 14 of 28):

“When any of the limits specified in the NMP have been achieved, no additional waste may be applied to that site unless a supplementary written approval has been issued by the Department.”

Questions: How can DNREC enforce these land application restrictions on an entity (Schiff Farms) that is not the permittee (Denali)?

2. Dairy Manure Tanks. This operation relies upon storage of DAF waste in four tanks that are not owned by Denali – they appear to be owned by Schiff Farms and located at a dairy farm.

Question: It is not clear in the permit if the dairy is allowed to put liquid animal waste in the tanks while the tanks are being used by Denali to store poultry processing waste.

3. EQIP Manure Storage Funding. EQIP contract restrictions (7 CFR Part 1466.21 Contract requirements):

(b) *Contract terms.* An EQIP contract will -

(1) Identify all conservation practices to be implemented, the timing of practice installation, the O&M requirements for the practices, and applicable payments allocated to the practices under the contract;

(2) Have a term for no more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will –

(i) Not implement any practices on the enrolled land that would defeat the program's purposes,

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.26,

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including O&M of the EQIP contract's conservation practices, consistent with the provisions of § 1466.25,

- (iv) Develop and implement any conservation practices identified in an EQIP plan of operations consistent with a CNMP when the EQIP contract includes an animal waste management facility on an AFO,
- (v) Implement conservation practices consistent with an approved forest management plan when the EQIP plan of operations includes forest-related practices that address resource concerns on NIPF,
- (vi) Supply information as required by NRCS to determine compliance with contract and program requirements, and
- (vii) Specify the participant's responsibilities for the O&M of the applied conservation practices, consistent with the provisions of § 1466.22; and

(4) Specify any other provision determined necessary or appropriate by NRCS to achieve the technical requirements of a practice or purposes of the program.

Questions: Does DNREC know if EQIP dollars were spent to construct the dairy manure tanks and whether the EQIP program allows a waste storage use other than manure storage without violating the original federal funding agreement?

4. Continuous Use. The AGU permit includes this statement:

“The site locations in this permit may be utilized for the application of DNREC approved land treatable wastes for up to, but not exceeding one continuous 365-day time period out of a three-year time period. The waste will be transported to the sites in accordance with a valid Delaware Waste Transporters Permit where it will be land applied at agronomic rates.”

Questions: How often can Denali land apply DAF on a parcel of land during a ‘continuous 365-day time period’ and what would be the maximum volume of DAF waste land applied for each of the permitted land parcels?

5. Alternative land application methods. The AGU permit includes this statement:

“The waste will be land applied by means of subsurface injection or alternatively by means of surface application with incorporation with separate written Department approval.”

Questions: Has the Department provided Denali with ‘separate written Department approval’ to use an alternative surface application method and if so, how would the public be informed?

6. Maximum load. On page 14 of the proposed permit:

“After an area has received its maximum load of DAF solids, an appropriate application of nitrogen corresponding to the requirements of the growing or subsequent crop may be applied to the area.”

Question: If the maximum load of DAF is based on nitrogen uptake and not on hydraulic loading or BOD loading, then why would there need to be supplemental nitrogen?

7. Permit in land application equipment. On page 16 of 28, the permit requires:

“A copy of this permit shall be kept in all land application equipment any time application of materials regulated under this permit occurs and shall be presented to the Department upon request.”

Question: If Denali does not do the land application, why would Denali’s permit be in the land application equipment? Shouldn’t DNREC be assigning the permit to the entity that is actually land applying the waste? If Denali is contracting out the land application duties, shouldn’t DNREC (and the public) have access to the contract to ensure that all aspects of the permit will be adhered to during land application?

8. Storage during winter months. On page 16 of 28, item 20 of the permit states:

“DAF solids may not be applied from December 7 through February 15. Application is limited to daylight hours only. In the event of unforeseen circumstances, the Department may make a written exception to these conditions.”

Question: Does Denali continue to accept waste from the poultry processing plants during the winter months? If so, is the waste stored in the four tanks? Does DNREC inspect those tanks for integrity? How does Denali control malodors during winter storage?

9. No groundwater monitoring. The permit does not require groundwater monitoring, yet the permit also emphasizes that groundwater quality standards cannot be exceeded:

“Application of waste to the designated fields shall not cause groundwater to exceedance applicable Federal or State Drinking Water Standards on an average annual basis.”

Question: How can DNREC be sure that groundwater quality standards have not been exceeded if the permit does not require that Denali sample and analyze shallow groundwater? Why does DNREC think that 20 inches of separation is sufficient to protect groundwater from nitrates, pathogens, and other pollutants?

Thanks,

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On Mon, Feb 28, 2022 at 12:33 PM Maria Payan <mariap@sraproject.org> wrote:

Brian,

Attached are comments and this is also a request for a hearing. Thank you for having the state NMP text corrected for a Delaware application but there are still many issues that need to be addressed as you can see from the comments. This is being submitted on behalf of SHEN and SRAP is signing on in support of the request and the comments attached.

Thanks,

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